

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MICHELE A. MARIANO

v.

C.A. No. 15-018 ML

CAROLYN COLVIN
*Acting Commissioner of Social
Security Administration*

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Objection to a Report and Recommendation issued by Magistrate Judge Sullivan on December 9, 2015 (Docket #22). The Report and Recommendation was issued after full briefing by both sides. Defendant has filed a Response to the Objection. In her Objection, Plaintiff focuses on three alleged claims of error, only one of which was raised before the Magistrate Judge.

As to Plaintiff's first claim, i.e., that the ALJ erred with respect to his credibility determination regarding Plaintiff's subjective complaints, the Report and Recommendation correctly sets forth the standard of review and painstakingly points to the record evidence in support of the Magistrate Judge's conclusion that the ALJ's finding on this point is based on substantial record evidence. This Court finds that Magistrate Judge Sullivan correctly determined that the ALJ committed no legal error in reaching his adverse credibility finding.

With regard to the two remaining claims of error, (1) that the ALJ improperly relied on Plaintiff's refusal of treatment to make his credibility determination, and, (2) that the ALJ's RFC finding does not account for the combined effect of her fibromyalgia and her obesity, as the Defendant points out, neither of these arguments were made before the Magistrate Judge. They are, therefore, not properly raised for the first time before this Court. The Court will not consider them. However, even if this Court were to address them, they are without merit for the

reasons set forth in Defendant's Response.

Having reviewed the Report and Recommendation, Plaintiff's Objections, and Defendant's Response, this Court adopts the Report and Recommendation in its entirety. Plaintiff's Motion to Reverse Defendant's Final Decision without a Remand for Rehearing or in the Alternative Reverse with a Remand for Rehearing (Docket #17) is DENIED, and Defendant's Motion for Order Affirming the Decision of the Commissioner (Docket #19) is GRANTED. Judgment shall enter in favor of Defendant.

SO ORDERED:

/s/ Mary M. Lisi
Mary M. Lisi
Senior United States District Judge
January 11, 2016